86 - 1095

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ELIZABETH J. KOHRIG,
Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Appellee.

Appeal from The Supreme Court of Illinois

JURISDICTIONAL STATEMENT

R. EDWARD VELTMAN, JR.
CRAIN, COOKSEY & VELTMAN, LTD.
623 East Broadway
P.O. Box 867
Centralia, Illinois 62801
Telephone: (618) 532-4744
Attorneys for Appellant

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

QUESTIONS PRESENTED FOR REVIEW

I

Whether the Illinois Seat Belt Law violates the fundamental right to privacy protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

II

Whether the Illinois Seat Belt Law exceeds the police power of the Illinois General Assembly, thus violating the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ELIZABETH J. KOHRIG,
Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Appellee.

Appeal from The Supreme Court of Illinois

JURISDICTIONAL STATEMENT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Pursuant to Rules 12.3 and 15 of the Rules of the Supreme Court of the United States, the appellant, Elizabeth J. Kohrig, files this statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction to review the final judgment of the Supreme Court of Illinois in the appellant's case and should exercise such jurisdiction by reviewing that final judgment.

OPINIONS BELOW

The opinion of the Supreme Court of Illinois was filed on October 1, 1986 under Docket Nos. 62719, 62799, 63705 and 63224 consolidated, and is reported at 113 Ill.2d 384, 498 N.E.2d 1158, 101 Ill.Dec. 650 (1986). The full text of the opinion is reprinted in the Appendix to this Jurisdictional Statement.

The order and opinion of the Circuit Court of Marion County, Illinois was filed on October 25, 1985, and is unreported. The full text of the opinion and order is also reprinted in the Appendix hereto.

JURISDICTION

This appeal is taken from the decision of the Supreme Court of Illinois reversing the judgment of the Circuit Court of Marion County, Illinois, which held that the Illinois Seat Belt Law (Ill. Rev. Stat. Ch. 95½, Sec. 12-603.1) was unconstitutional because it violated the due process guarantees of the State and Federal Constitutions (Ill. Const. 1970, Art. I, Sec. 2; U.S. Const., Amend XIV, Sec. 1).

The jurisdiction of the Supreme Court of the United States is invoked under the provisions of Title 28, United States Code, Section 1257, subparagraph 2.

Notice of Appeal was filed in the Supreme Court of Illinois on December 19, 1986. A copy of the Notice is contained in the Appendix hereto.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This appeal involves the following constitutional and statutory provisions:

The United States Constitution, Amendment Fourteen, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Illinois Constitution (1970), Article I, Section 2.

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

The Illinois Seat Belt Law, Illinois Revised Statutes, Chapter 95½, Section 12-603.1

Driver and passenger required to use safety belts, exceptions and penalty. (a) Each driver and front seat passenger of a motor vehicle operated on a street or highway in this State shall wear a properly adjusted and fastened seat safety belt; except that, a child less than 6 years of age shall be protected as required pursuant to the Child Passenger Protection Act. Each driver of a motor vehicle transporting a child 6 years of age or more, but less than 16 years of age, in the front seat of the motor vehicle shall secure the child in a properly adjusted and fastened seat safety belt.

(b) Paragraph (a) shall not apply to any of the following:

1. A driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle, if the speed of the vehicle between stops does not exceed 15 miles per hour.

2. A driver or passenger possessing a written statement from a physician that such person is unable, for medical or physical reasons, to wear a seat safety belt.

3. A driver or passenger possessing an official certificate or license endorsement issued by the appropriate agency in another state or country indicating that the driver is unable for medical, physical, or other valid reasons to wear a seat safety belt.

4. A driver operating a motor vehicle in reverse.

5. A motor vehicle with a model year prior to 1965.

6. A motorcycle or motor driven cycle.

7. A motorized pedalcycle.

8. A motor vehicle which is not required to be equipped with seat safety belts under federal law.

9. A motor vehicle operated by a rural letter carrier of the United States postal service while performing duties as a rural letter carrier.

(c) Failure to wear a seat safety belt in violation of this Section shall not be considered evidence of negligence, shall not limit the liability of an insurer, and shall not diminish any recovery for damages arising out of the ownership, maintenance, or operation of a motor vehicle.

(d) A violation of this Section shall be a petty offense and subject to a fine not to exceed $25.

STATEMENT OF THE CASE

In December, 1984, the Illinois General Assembly enacted the Illinois Seat Belt Law, Ill. Rev. Stat., Ch. 95 ½, Sec. 12-603.1. Governor James R. Thompson signed the Bill into law on January 8, 1985. The Law requires all front-seat vehicle occupants to wear seat belts, and provides exemptions for those who are unable to wear seat belts for medical reasons, for vehicles that are not equipped with seat belts, and for people who must leave their vehicles frequently. Violation of the law is a criminal offense.

Elizabeth J. Kohrig was issued a traffic citation in Marion County, Illinois, for violating the Illinois Seat Belt Law. Mrs. Kohrig challenged the constitutionality of the Law. She argued in the Circuit Court that the Law: 1) violates the fundamental right of privacy protected by the due process clause of the Fourteenth Amendment of the U.S. Constitution; and 2) exceeds the police power granted to the Illinois General Assembly and, therefore violates the due process clauses of the Illinois Constitution and the Fourteenth Amendment of the U.S. Constitution. The Circuit Court for the Fourth Judicial Circuit, Marion County, Illinois agreed with Mrs. Kohrig and ruled that the Law was unconstitutional.

The State appealed directly to the Illinois Supreme Court pursuant to Illinois Supreme Court Rule 302(a) which provides that final judgments of Circuit Courts in cases in which a federal or state statute has been held invalid are directly appealable to the State Supreme Court. The Circuit Court decision in Mrs. Kohrig's case was one of first impression in the State of Illinois. By the time the appeal was taken, three other Circuit Courts in the State had also declared the seat belt law unconstitutional. The appeals of all four Circuit Court decisions were consolidated by the State for presentation to the Illinois Supreme Court.

On October 1, 1986, in a per curiam opinion covering all four consolidated appeals, including Mrs. Kohrig's case, the Illinois Supreme Court reversed each of the Circuit Court judgments and remanded each case to its respective Circuit Court for further proceedings. In reversing the Circuit Court judgments, the Illinois Supreme Court held that the Seat Belt Law does not infringe upon a person's fundamental right to privacy protected by the Fourteenth Amendment, and does not infringe upon any right to privacy arising under the Illinois Constitution. The court further held that the Seat Belt Law does not exceed the police power of the State because it bears a legitimate legislative purpose and is neither arbitrary nor discriminatory.

On October 21, 1986, Elizabeth Kohrig, through her attorneys, filed a motion in the Illinois Supreme Court to stay that court's mandate to the Circuit Court of Marion County. On October 30, 1986, the Illinois Supreme Court granted the motion and entered an Order staying the mandate pending the filing of a Notice of Appeal to the Supreme Court of the United States. The full text of the Order staying the mandate is contained in the Appendix hereto.

STATEMENT OF REASONS WHY QUESTIONS PRESENTED ARE SUBSTANTIAL AND REQUIRE PLENARY CONSIDERATION FOR THEIR RESOLUTION

This appeal presents substantial questions concerning: a) the extent to which state governments can infringe upon certain aspects of the fundamental right to privacy enjoyed by all U.S. citizens; b) whether a state, under its police power, can subject persons to criminal penalties for failure or refusal to perform an act which may cause them injury or death; and c) whether states, under the guise of furthering public health, safety and welfare, can regulate a matter of personal safety. The Supreme Court of Illinois has held, in this case, that neither the Illinois Constitution nor the U.S. Constitution recognize a fundamental right of privacy in the decision whether or not to wear a seat belt. This is a matter of first impression, one which should be reviewed by the Supreme Court of the United States to determine the correctness of the Illinois Supreme Court's interpretation of the U.S. Constitution.

As this court stated in *Thornburgh, et al. v. American College of Obstetrics and Gynecology,* No. 84-495 (Decided June 11, 1986),

> "Constitutional rights do not always have easily ascertainable boundaries, and controversy over the meaning of our nation's most majestic guarantees frequently has been turbulent... But those disagreements did not then and do not now relieve us of our duty to apply the constitution faithfully." *Id,* slip op. at 22-23.

Cases involving claims to constitutional protection deal with "the individual's right to make certain unusually important decisions that will affect his own, or his family's destiny." *Fitzgerald v. Porter Memorial Hospital,* 523 F.2d 716, 719 (CA7 1975), cert. denied 425 U.S. 916 (1976). The decision whether or not to wear a seat belt is a decision that will affect a person's destiny. As such, that decision should be considered by the

Supreme Court of the United States against "the background of Constitutional purposes, as they have been rationally perceived and historically developed". *Poe v. Ullman,* 367 U.S. 497, 544 (1961) (Harlan J. Dissenting).

The questions presented in this appeal require consideration and resolution by the Supreme Court of the United States because of the need for uniform guidelines, concise definitions, and clearly marked parameters for seat belt legislation. The current pressure being exerted on state legislators to pass mandatory seat belt laws, the intense lobbying efforts of the various special interest groups, and the conflicting data and statistics on seat belt use have created a dangerous situation in which certain fundamental and personal rights are threatened. Seat belt legislation, of the type being urged upon the states by the Department of Transportation, touches upon individual fundamental protected rights, and gives rise to the conflict between those rights and claims of furthering the public health, welfare and safety. Mrs. Kohrig's test of the constitutionality of the Illinois Seat Belt Law should be reviewed by this court for a final resolution of the issues which are, or will be, germane to each State's attempt to regulate the wearing of seat belts.

The Illinois Supreme Court is the first of any state's highest court to address the mandatory seat belt legislation issue. In its opinion the Illinois Supreme Court has attempted, with questionable results, to second-guess the Supreme Court of the United States by interpreting and applying recent decisions such as *Bowers v. Hardwick,* (1968) 478 U.S. ____, 106 S.Ct. 2841, 92 L.Ed.2d 140. It is necessary that the Supreme Court of the United States determine the applicability of its decisions to the issue of mandatory seat belt legislation. The Illinois Supreme Court has boldly concluded that its state's law does not violate the due process guarantees of the Fourteenth Amendment. Whether this conclusion is correct should be determined by the Supreme Court of the United States so that future action by Illinois and other states will be more consistent and, hopefully, within the constitutional limitations and scope of the states' police powers as determined by this Court.

> "While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also... those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." *Meyer v. Nebraska,* (1923) 262 U.S. 390, 391, 42 Sup.Ct. 625, 626.

Mandatory seat belt legislation, which states are being urged to adopt by the United States Department of Transportation, must contain some form of criminal penalty for violations. The Illinois law punishes violators by imposing a twenty-five dollar fine and recording a conviction against violators for a petty offense. Despite the penal nature of the Illinois Seat Belt Law, the Illinois Supreme Court refused to subject the legislation to strict scrutiny and require the state to show a compelling purpose for the law. It is important that the Supreme Court of the United States determine, for the benefit of state legislatures and courts, the applicable test for determining the validity of forthcoming seat belt legislation.

For all of the foregoing reasons, the appellant, Elizabeth J. Kohrig, believes that this appeal presents questions which are substantial, and which require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Dated this 3lst day of December, 1986.

Respectfully submitted,

R. Edward Veltman Jr.
CRAIN, COOKSEY &
VELTMAN, LTD.
623 East Broadway
P.O. Box 867
Centralia, Illinois 62801
Telephone: (618) 532-4744

Attorneys for Appellant

APPENDIX

APPENDIX

APPENDIX A

IN THE
SUPREME COURT OF ILLINOIS

Nos. 62719, 62799, 63075, 63224, Cons.

The People of the State of Illinois,
Plaintiff-Appellant,

v.

Elizabeth J. Kohrig, et al.,
Defendant-Appellees.

Direct Appeal from the Circuit Courts of the
Fourth Judicial Circuit, Marion, Effingham, and
Fayette Counties, and of the Sixth Judicial Circuit,
Champaign County, Illinois,

Nos. 85-TR-4889, 85-TR-4136
85-TR-3266, 85-T-12467

The Honorable Richard H. Brummer, John R. DeLaMar
Dennis Berkbigler, and Richard Hodson,
Judges Presiding

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the above-named defendant-appellee, Elizabeth J. Kohrig, appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Illinois, rendered October 1, 1986, reversing the judgment of the Circuit Court of Marion County which held that the Illinois Seat Belt Law (Ill. Rev. Stat., Ch. 95 ½, Sec. 12-603.1) was unconstitutional.

This appeal is taken pursuant to Title 28, United States Code, Section 1257, subparagraph 2.

Date: December 19, 1986

/s/ R. Edward Veltman, Jr.
CRAIN, COOKSEY &
VELTMAN, LTD.
623 East Broadway
P.O. Box 867
Centralia, Illinois 62801
Telephone: (618) 532-4744

NOTICE OF FILING AND CERTIFICATE OF MAILING

To:

Honorable Neil F. Hartigan
Attorney General
500 South Second
Springfield, IL 62706

Robert W. Matoush, Esq.
Marion County State's Attorney
Marion County Courthouse
Salem, Illinois 62881

Mr. Jerold S. Solovy
Jenner & Block
One IBM Plaza
Chicago, Illinois 60611

Hon. Juleann Hornyak
Clerk of the Illinois Supreme Court
Supreme Court Building
Springfield, Illinois 62706

PLEASE TAKE NOTICE that I, R. Edward Veltman, Jr., an attorney, hereby certify that on Friday, December 19, 1986, I have filed the original and two copies of the Notice of Appeal on behalf of the appellant, Elizabeth J. Kohrig, with the Clerk of the Illinois Supreme Court by placing said copies in an envelope, legibly addressed, securely sealed and sufficiently stamped, and depositing same in the United States Mail at Centralia, Illinois at 5 o'clock P.M., on this 19th day of December, 1986. Service upon the necessary parties hereto has been made as indicated in the attached Certificate of Service.

Dated: December 19, 1986

R. Edward Veltman, Jr.
CRAIN, COOKSEY &
VELTMAN, LTD.
623 East Broadway
P.O. Box 867
Centralia, Illinois 62801
Telephone: (618) 532-4744

CERTIFICATE OF SERVICE

I do hereby certify that I have served upon:

Honorable Neil F. Hartigan
Attorney General
500 South Second
Springfield, IL 62706

Robert W. Matoush, Esq.
Marion County State's Attorney
Marion County Courthouse
Salem, Illinois 62881

Mr. Jerold S. Solovy
Jenner & Block
One IBM Plaza
Chicago, Illinois 60611

Hon. Juleann Hornyak
Clerk of the Illinois Supreme Court
Supreme Court Building
Springfield, Illinois 62706

a true and correct copy of the foregoing pleadings, in compliance with Rule 28.5 of the Rules of Practice of the United States Supreme Court, by placing said copy in an envelope, legibly addressed, securely sealed and sufficiently stamped, and depositing same in the United States Mail at Centralia, Illinois at 5 o'clock P.M., all in compliance with said Rule on this date.

Date: December 19, 1986

R. Edward Veltman, Jr.
CRAIN, COOKSEY &
VELTMAN, LTD.
623 East Broadway
P.O. Box 867
Centralia, Illinois 62801
Telephone: (618) 532-4744

APPENDIX B

IN THE
SUPREME COURT OF ILLINOIS

Nos. 62719, 62799, 63075, 63224, Cons.

People State of Illinois,
Appellant

v.

Elizabeth J. Kohrig, et al.,
Appellees

Appeal From Circuit Court
Marion, Effingham and Fayette Countys

ORDER

(Filed Oct. 30, 1986)

This matter has come for consideration upon the motion of *Appellee, Elizabeth Kohrig,* to stay the mandate of this Court pending appeal or application for *certiorari* in the United States Supreme Court.

IT IS ORDERED that the mandate of this Court in the above cause is stayed pending the filing of a notice of appeal or an application for *certiorari* or the expiration of the period within which said application or notice may be filed. If *certiorari* is applied for or notice of appeal filed, the mandate of this Court shall, upon proof of such filing being made by affidavit filed with the clerk of this Court, be further stayed pending resolution by the United States Supreme Court of such application or appeal. If no such affidavit is filed, the mandate shall, without further order, issue upon the expiration of the time within which appeal or *certiorari* may be sought.

Ben Miller
Justice, Supreme Court of Illinois

APPENDIX C

Docket Nos. 62719, 62799, 63705, 63224 cons. — Agenda 40 — May 1986

THE PEOPLE OF THE STATE OF ILLINOIS *et al.*, Appellants, v. ELIZABETH J. KOHRIG, *et al.*, Appellees.

PER CURIAM: The defendants in these four consolidated cases were issued traffic citations for failure to wear seat safety belts while operating their motor vehicles on a street or highway in violation of section 12-603.1 of the Illinois Vehicle Code (Ill. Rev. Stat. 1985, ch. 95½ par. 12-603.1 (hereinafter the section).) In each case the trial court concluded that the section was unconstitutional and dismissed the charge. The State appealed each case directly to this court pursuant to our Rule 302(a) (94 Ill. 2d R. 302(a)), and the cases were consolidated for purposes of appeal. Only two of the four defendants — Elizabeth J. Kohrig and Regina L. Greene — have filed briefs in this court; however, various parties have been permitted to file briefs as *amicus curiae*.

At issue is whether the section, which requires drivers of motor vehicles and their front-seat passengers to wear safety belts when driving on a public highway or street, violates the due process guarantees of the State and Federal constitutions. Ill. Const. 1970, art. I, sec. 2, U.S. Const., amend. XIV, sec. 1.

The section, which became effective on July 1, 1985, provides in part:

> "(a) Each driver and front seat passenger of a motor vehicle operated on a street or highway in this State shall wear a properly adjusted and fastened seat safety belt except that a child less than 6 years of age shall be protected as required pursuant to the Child Passenger Protection Act. Each driver of a motor vehicle transporting a child 6 years of age or more but less than 16 years of age in the front seat of the motor vehicle shall secure the child in a properly

adjusted and fastened seat safety belt." (Ill. Rev. Stat. 1985, ch. 95½, par. 12-603.1(a).)

The statute also provides that certain persons are exempt from complying with the seat-belt-use requirement, including persons with a written medical waiver from a physician or government agency, those persons frequently stopping and leaving the vehicle or delivering property from the vehicle if its speed between stops does not exceed 15 miles per hour, and drivers operating a vehicle in reverse. (Ill. Rev. Stat. 1985, ch. 95½, par. 12-603.1(b)(1), (b)(4).) Certain vehicles also are exempt from the statute's requirements, including motorcycles, motorized pedalcycles, and vehicles manufactured prior to 1965. (Ill. Rev. Stat. 1985, ch. 95½, par 12-603.1(b)(5), (b)(9).) Violators of the section are guilty of a "pretty offense and subject to a fine not to exceed $25." Ill. Rev. Stat. 1985, ch. 95½, par. 12-603.1(d).

At the outset we note that, in reviewing the constitutionality of Illinois' mandatory-seat-belt law, this court does not join in the debate over whether the law is desirable or necessary. Our nation was founded in large part on the democratic principle that the powers of government are to be exercised by the people through their elected representatives in the legislature, subject only to certain constitutional limitations. Although this court has never hesitated to invalidate laws that it believes to be unconstitutional, we emphasize that our role is a limited one. The issue here in "not what the legislature should do but what the legislature can do." *City of Wichita v. White* (1970), 205 Kan. 408, 409, 469 P.2d 287, 288.

Defendant Greene contends that the section violates her fundamental right to privacy protected by the due process clause of the fourteenth amendment. (U.S. Const., amend. XIV, sec. 2.) Additionally, both defendants argue that the section is beyond the police powers of the legislature and thus violates the due process clause of the State and Federal constitutions. We first

turn to the issue of whether the section violates defendants fundamental right to privacy protected by the fourteenth amendment.

Regulations that limit a person's constitutional right to privacy may be justified only ba a " 'compelling state interest' " and the legislation, "must be narrowly drawn to express only the legitimate state interest at stake." (*Roe v. Wade* (1973), 410 U.S. 113, 155, 35 L. Ed. 2d 147, 178, 93 S. Ct. 705, 728. See also *Carey v. Population Sciences International* (1977), 431 U.S. 678, 686, 52 L.Ed. 2d 678, 688, 97 S. Ct. 2010, 2016. However, " 'only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty" [citation]' " (*Paris Adult Theatre I v. Slaton* (1973), 413 U.S. 49, 65, 37 L.Ed.2d 446, 462, 93 S.Ct. 2628, 2639, quoting *Roe v. Wade* (1973), 410 U.S. 113, 152, 35 L. Ed. 2d 147, 176, 93 S. Ct. 705, 726), or those liberties ' "deeply rooted in this Nation's history and tradition' " (*Bowers v. Hardwick* (1986), 478 U.S. ____, ____, 92 L. Ed. 2d 140, 146, 106 S. Ct. 2841, 2844; see also *Moore v. City of East Cleveland* (1977), 431 U.S. 494, 503, 52 L. Ed. 2d 531, 540, 97 S. Ct. 1932, 1938) are included in the right of privacy guaranteed by the due process clause of the fourteenth amendment. The Supreme Court has selected only a few rights for such an esteemed status: the "privacy right encompasses and protects the personal intimacies of the home, the family, marriage, motherhood, procreation, and child rearing." *Paris Adult Theatre I v. Slaton* (1973), 413 U.S. 49, 65, 37 L. Ed. 2d 446, 462, 93 S. Ct. 2628, 2639. See *Bowers v. Hardwick* (1986), 478 U.S. ____, ____, 92 L. Ed. 2d 140, 148, 106 S. Ct. 2841, 2846; *Paul v. Davis* (1976), 424 U.S. 693, 712-13, 47 L. Ed. 2d 405, 420-21, 96 S. Ct. 1155, 1166.

Moreover, recognizing that a court is "most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution," the Supreme Court has emphasized that there should be "great resistance" to further

expanding the substantive due process right of privacy. (*Bowers v. Hardwick* (1986), 478 U.S. ____, ____, 92 L. Ed. 2d 140, 148, 106 S. Ct. 2841, 2846.) Thus, attempts by litigants to expand the privacy right beyond matters relating to marriage, procreation, contraception, family relations, abortion, child rearing and education have largely been unsuccessful. See, *e.g., Bowers v. Hardwick* (1986), 478 U.S. ____, 92 L. Ed. 2d 140, 106 S. Ct. 2841 (right to privacy does not encompass right to engage in homosexual sodomy, *Kelley v. Johnson* (1977), 425 U.S. 231, 244, 47 L. Ed. 2d 708, 714, 96 S.Ct. 1440, 1444 (police officer does not have privacy right to choose hairstyle), *Paul v. Davis* (1976), 424 U.S. 693, 47 L. Ed. 2d 405, 96 S. Ct. 1155 (the privacy protection of reputation), *Paris Adult Theatre I v. Slaton* (1973), 418 U.S. 49, 37 L. Ed. 2d 446, 98 S. Ct. 2628 (privacy right does not encompass right of adults to watch obscene movies in places of public accomodation).

In the present case it cannot be said that defendant Greene's claimed right to decide whether or not to wear a safety belt on a public highway resembles those liberties identified by the Supreme Court as being included in the right of privacy protected by the fourteenth amendment. Although the section in question implicates a person's interest in "liberty" in the sense that it restricts his freedom of choice, the law here does not regulate those intimate decisions relating to marriage, procreation, child rearing, education or family that have heretofore been recognized as deserving of heightened constitutional protection. (See *Wells v. State* (1985), ____ A.D.2d ____, 495 N.Y.S. 2d 591 (mandatory-seat-belt-use law does not violate right of privacy). *Cf. People v. Thomas* (1984), 159 Cal. App. 3d Supp. 18, 206 Cal. Rptr. 84 (statute requiring the securing of a child passenger in a seat-restraint system does not infringe on defendant's fundamental right of privacy), *State v. Fetterly* (1969), 254 Or. 47, 456 P.2d 996 (motorcycle helmet law does not violate defendant's right of privacy).) Nor do we think that the right to decide whether or not to wear a safety belt is "implicit in the concept of ordered liberty" such that "neither liber-

ty nor justice would exist if [it] were sacrificed" (*Palko v. Connecticut* (1937), 302 U.S. 319, 325-26, 82 L.Ed. 288, 292, 58 S. Ct. 149, 152), or a liberty "deeply rooted in this Nation's history and tradition" (*Moore v. East Cleveland* (1977), 431 U.S. 494, 503, 52 L. Ed. 2d 531, 540, 97 S. Ct. 1932, 1938). The States historically have been given a wide latitude to regulate the use of motor vehicles (*Bibb v. Navajo Freight Lines, Inc.* (1959), 359 U.S. 520, 530, 3 L. Ed. 2d 1003, 1010, 79 S. Ct. 962, 968), and the individual driver's autonomy on the road has, out of necessity for the public safety and welfare, been significantly curtailed by State regulation. Like the court in *Bisenius v. Karns* (1969) 42 Wis. 2d 42, 165 N.W.2d 377, *appeal dismissed* (1969), 396 U.S. 709, 23 L. Ed. 2d 655, 89 S. Ct. 2033, we reject any notion that the right of privacy includes the right to "do one's thing" on an expressway:

> "There is no place where any such right to be let alone would be less assertable than on a modern highway with cars, trucks, busses and cycles whizzing by at sixty or seventy miles an hour. When one ventures onto such a highway he must be expected and required to conform to public safety regulations and controls, including some that would neither have been necessary nor reasonable in the era of horse-drawn vehicles." 142 Wis. 2d 42, 165 N.W.2d 377, 384.

We are unwilling to graft onto the Constitution a right of privacy to decide whether or not to wear a safety belt where there is not textual basis or a clear historical precedent for such a right in the language of the Constitution or the opinions of the Supreme Court. To do so would be to place the court in a position of acting as a super-legislature, nullifying laws it does not like. That is not our proper role in a democratic society. Therefore, we hold that the section does not infringe upon defendant's fundamental right of privacy protected by the fourteenth amendment. Neither does it infringe upon any right to privacy arising under the Illinois Constitution (Ill. Const. 1970, art. I, sec. 6)

Defendants also argue that the section does not further the health, safety or welfare of the general public, asserting that the statute only protects the safety of the individual driver and passenger. They contend that since the section interferes with their right to decide whether or not to wear a safety belt, and has no corresponding public benefit, the statute exceeds the State's police power and violates the due process guarantees of the State and Federal constitutions.

It is well established that the legislatures, not the courts have the primary role in our democratic society in deciding what the interests of the public require and in selecting the measures necessary to secure those interests. (*City of Carbondale v. Brewster* (1979), 78 Ill. 2d 111, 115; *Memorial Gardens Association, Inc. v. Smith* (1959), 16 Ill. 2d 116, 127.) Recognizing the legislature's broad power to provide for the public health, welfare and safety, the courts are hesitant to second-guess a legislative determination that a law is desirable or necessary. Only when the statute in question affects a fundamental constitutional right will the courts subject the legislation to strict or exacting scrutiny. In such cases, the State must have a "compelling" purpose for the law and show that it's goals cannot be accomplished by less restrictive means. (*Carey v. Population Services International* (1977), 431 U.S. 678, 686, 52 L. Ed. 2d 675, 97 S. Ct. 2010, 2016.) Few rights however have been identified as "fundamental" since only those rights "that lie at the heart of the relationship between the individual and a republican form of nationally integrated government" are deemed deserving of heightened judicial scrutiny (*People ex rel. Tucker v. Katsos* (1977), 68 Ill. 2d 88, 97.) Thus, in most cases involving substantive due process challenges to statutes, the courts give substantial deference to the legislative enactments.

In the present case we already have determined that the section here involved does not infringe upon the defendants' right of privacy protected by the fourteenth amendment, and defendants do not argue that the statute implicates any other fun-

damental constitutional right or liberty. As such, the State need not show a "compelling interest" for the law. It is sufficient that there is a rational basis for the statute. That is, the law will be upheld if it bears a rational relation to a legitimate legislative purpose and is neither arbitrary nor discriminatory. (*Williamson v. Lee Optical of Oklahoma, Inc.* (1955), 348 U.S. 483, 487-88, 99 L. Ed. 563, 572, 75 S. Ct. 461, 464; *Harris v. Manor Healthcare Corp.* (1986), 111 Ill.2d 350, 368, *Hayen v. County of Ogle* (1984), 101 Ill. 2d 413, 419; *Illinois Gamefowl Breeders Association v. Block* (1979), 75 Ill.2d 443, 453.) Under the rational-basis test, a statute is presumed to be valid, and the party challenging the statute has the burden of proving that the statute is irrational. (*Hayen v. County of Ogle* (1984), 101 Ill. 2d 413, 419, *Pozner v. Mauck* (1978), 73 Ill. 2d 250, 255.) As long as there is a conceivable basis for finding a rational relationship, the law will be upheld. *McGowan v. Maryland* (1961), 366 U.S. 420, 426, 6 L. Ed. 2d 393, 399, 81 S.Ct. 1101, 1105; *Harris v. Manor Healthcare Corp.* (1986), 111 Ill. 2d 350, 368.

In challenging the section as exceeding the scope of the State's police power, the defendants principally rely on the case of *People v. Fries* (1969), 42 Ill. 2d 446. In *Fries* the court held that a statute requiring the operator or passenger of a motorcycle to wear protective headgear was unconstitutional. The court reasoned that the purpose of the headgear requirement was to "safeguard the person wearing it" and was unrelated to the safety of the public at large (42 Ill. 2d 446, 450.) It concluded that the statute constituted a "regulation of what is essentially a matter of personal safety" and exceeded the scope of the State's police power (42 Ill. 2d 446, 450.) Here, too, defendants argue that the decision of whether or not to wear a safety belt is "essentially a matter of personal safety" and that any regulation restricting the individual's right to make such a decision exceeds the State's police power.

The State on the other hand maintains that *Fries* was wrong, decided and it urges us to overrule that decision. It correctly

notes that at present *Fries* stands alone in holding that a motorcycle helmet law is unconstitutional. The overwhelming weight of authority is that motorcycle helmet laws are a valid exercise of the State's police power. (See *Kingery v. Chapple* (Alaska 1972), 504 P.2d 831; *State v. Beeman* (1975), 25 Ariz. App. 83, 541 P.2d 409, *Penney v. City of North Little Rock* (1970), 248 Ark. 1158, 455 S.W.2d 132; *Love v. Bell* (1970), 171 Colo. 27, 465 P.2d 118; *State v. Brady* (Del. Super. 1972), 290 A.2d 322; *Hamm v. State* (Fla. 1980), 387 So. 2d 946; *State v. Cotton* (1973), 55 Hawaii 138, 516 P.2d 709; *State v. Albertson* (1970), 93 Idaho 640, 470 P.2d 300; *City of Wichita v. White* (1970), 205 Kan. 408, 469 P.2d 287; *Everhardt v. City of New Orleans* (1968) 253 La. 285, 217 So. 2d 400, *appeal dismissed and cert. denied* (1969), 395 U.S. 212, 23 L. Ed. 2d 214, 89 S. Ct. 1775; *State v. Quinnam* (Me. 1977), 367 A.2d 1032; *Simon v. Sargent* (D. Mass. 1972), 346 F.Supp. 277, *aff'd* (1972), 409 U.S. 1020, 34 L. Ed. 2d 312, 93 S. Ct. 463; *Commonwealth v. Houne* (1968), 354 Mass. 769, 238 N.E.2d 373, *cert. denied* (1968), 393 U.S. 999, 21 L. Ed. 2d 464, 89 S. Ct. 485; *City of Adrian v. Poucher* (1976), 398 Mich. 316, 247 N.W.2d 798; *State v. Edwards* (1970), 287 Minn. 83, 177 N.W.2d 40; *State v. Cushman* (Mo. 1970), 451 S.W.2d 17; *State v. Eighth Judicial District Court* (1985), 101 Nev. 658, 708 P.2d 1022; *State v. Merski* (1973), 113 N.H. 323, 307 A.2d 825; *State v. Krammes* (1969), 105 N.J. Super. 345, 252 A.2d 223; *City of Albuquerque v. Jones* (1975), 87 N.M. 486, 535 P.2d 1337; *People v. Bennett* (1977), 89 Misc. 2d 382, 391 N.Y.S.2d 506; *State v. Anderson* (1969), 275 N.C. 168, 166 S.E.2d 49; *State v. Odegaard* (N.D. 1969), 165 N.W.2d 677; *State v. Stouffer* (1971), 28 Ohio App. 2d 229, 276 N.E.2d 651; *Elliott v. City of Oklahoma City* (Okla. Crim. App. 1970), 471 P.2d 944; *State v. Fetterly* (1969), 254 Or. 47, 456 P.2d 996; *Commonwealth v. Kautz* (1985), 341 Pa. Super. 374, 491 A.2d 864; *State ex rel. Coleman v. Lombardi* (1968), 104 R.I. 28, 241 A.2d 625, *Arutangh v. Metropolitan Government of Nashville & Davidson County* (1969), 223 Tenn. 535, 448 S.W.2d 408; *Ex Parte Smith* (Tex. Crim. App. 1969),

441 S.W.2d 544; *State v. Acker* (1971), 26 Utah 2d 104, 485 P.2d 1038; *State v. Soloman* (1969), 128 Va. 197, 260 A.2d 377; *State v. Laitiner* (1969, 77 Wash. 2d 130, 459 P.2d 789; *State v. Zektzer* (1975), 13 Wash. App. 24, 533 P.2d 399, *cert. denied* (1975), 423 U.S. 1020, 46 L. Ed. 2d 392, 96 S.Ct. 457; *Bisemus v. Karns* (1969), 42 Wis. 2d 42, 165 N.W.2d 377, *appeal dismissed* (1969), 395 U.S. 709, 23 L. Ed. 2d 655, 89 S. Ct. 2033.) Alternatively, the State contends that the statute being challenged here promotes valid public interests and thus is distinguishable from the motorcycle helmet law found to be unconstitutional in *Fries*.

Defendants are correct in asserting that the primary goal of the section is to protect the individual driver and front-seat passenger from death or serious injury. As such, the statute interferes with the individuals' choice concerning his or her personal safety. However, arriving at those conclusions does not *ipso facto* mean that the law is devoid of any public benefit and is unconstitutional. Regardless of a law's primary objective, it will be upheld if it bears a rational relation to a legitimate legislative purpose. (*Harris v. Manor Healthcare Corp.* (1986), 111 Ill. 2d 350, 368-69; *Illinois Gamefowl Breeders Association v. Block* (1979), 75 Ill. 2d 443, 453.) In that regard, the defendants have not persuaded us that the legislature could not have found that the law bears a rationale relationship to a legitimate legislative purpose. The legislative debates clearly indicate that the legislators believed that safety-belt use would protect persons other than the belt wearers by helping drivers to maintain control of their vehicles, and that the law would promote that economic welfare of the State by reducing the public and private costs associated with serious injuries and deaths caused by automobile accidents.

During debates in the House of Representatives, a principal sponsor of the safety-belt legislation remarked,

> "The Bill would not only protect drivers and passengers in the front seat, the Bill would also protect other people. It

> would protect other drivers. It would protect pedestrians on our highways and on our sidewalks. The reason for that, of course, is that even a minor * * * accident can if * * * a car is driven by a person who does not have a seat belt * * * result in that person losing control of the car and injuring other people on or about the car" (83d Ill. Gen. Assem., House Debates, May 16, 1984 at 212 (statement of Representative John Cullerton).)

Another legislator argues that if she were to drive an automobile without her safety belt fastened "and I lose control of my car, I am endangering others." (83d Ill. Gen. Assem., House Debates, May 16, 1984, at 223 (statement of Representative Josephine Oblinger).) The Governor, in signing the seat-belt law, also agreed that the law would help drivers to maintain control of their vehicles and avoid accidents with other motorists and pedestrians.

> "Unbelted passengers in a motor vehicle literally become human projectiles in the event of a crash. Unbelted passengers can interfere with the ability of an operator to respond to the collision, and unbelted drivers may lose control of a vehicle and thus cause death and injury to others." Letter of Governor James R. Thompson to the General Assembly indicating his intent to sign House Bill 2800 (Jan. 8, 1985)

The State can enact laws aimed at reducing traffic accidents, since such laws are clearly related to the health, welfare and safety of the public. We also believe that the legislature could rationally conclude that unbelted drivers and passengers endanger the safety of others. In upholding a law similar to the one here under review, the court in *People v. Weber* (1985), 129 Misc. 2d 993, 494 N.Y.S.2d 960, stated:

> "A driver who is injured or who is jolted away from his vehicle's controls during a skid or by an initial impact, may well be less able to prevent or minimize injuries caused by

> an accident. Also, an unrestrained occupant of a vehicle may injure others inside or out of the vehicle during an accident. The preventing or reduction of such an injury seems to the Court to be a valid State interest." (129 Misc. 2d 993, ____, 494 N.Y.S. 2d 960, 963.)

It also is conceivable that drivers who wear safety belts are less likely to fall asleep at the wheel, or to lose control of their vehicles in situations where the driver must apply the brakes suddenly, or in cases where a vehicle begins to skid or swerve. Safety belts can also prevent passengers from being thrown against the driver. And, as the State observes, children and other occupants who are wearing safety belts are less likely to distract the driver. See *People v. Weber* (1985), 129 Misc. 2d 993 ____, 494 N.Y.S.2d 960, 963; Druhot, *The Constitutionality of the Illinois Mandatory Seat Belt Use Legislation,* 74 Ill. B.J. 290, 296 (1986); Werber, *A Multi-Disciplinary Approach To Seat Belt Issues,* 29 Cleve. St. L. Rev. 217, 244 (1980).

Defendants argue that there is no statistical evidence showing that seat-belt use helps the driver to maintain control of his vehicle and avoid accidents with other motorists or pedestrians. Even assuming this argument is correct, it is without merit. "The fact that a congressional directive reflects unprovable assumptions about what is good for the people * * * is not a sufficient reason to find that statute unconstitutional" (*Paris Adult Theatre I v. Slaton* (1973), 413 U.S. 49, 62, 37 L. Ed. 2d 446, 460, 98 S. Ct. 2628, 2638), and a court "will not distrub a police regulation merely where there is room for a difference of opinion as to its wisdom, necessity and expediency." (*City of Carbondale v. Brewster* (1979), 78 Ill. 2d 111, 115. *See also Schuringa v. City of Chicago* (1964), 30 Ill. 2d 504, 515.) Moreover, "the law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it." (*Williamson v. Lee Optical of Oklahoma, Inc.* (1955), 348

U.S. 483, 487-88, 99 L. Ed. 563, 572, 75 S. Ct. 461, 464.) Here, we think that the legislature could rationally determine that the seat-belt-use law would serve the public safety and welfare by reducing the likelihood that a driver would lose control of his vehicle and jeopardize other motorists or pedestrians.

Another reason advanced by the State for the section is that the law promotes the economic welfare of the State by reducing the public costs associated with serious injuries and deaths caused by automobile accidents. The legislative history of the section indicates that legislators were concerned about the financial costs associated with highway accidents. Representative Cullerton remarked that the safety-belt legislation "would clearly save money" asserting that "it cost the State over 800,000 dollars for a 26 year old person who is made a paraplegic as a result of a car crash." (83d Ill. Gen. Assem., House Debates, May 16, 1984, at 212 (statement of Representative John Cullerton).) Another Representative stated, "The lives we save and the injuries that we avoid are the injuries and lives that we, the taxpayers, are very likely to be responsible for in the long run. We're not talking about somebody's own individual decision to end up in a car crash and find him or herself in a hospital for 20 years with that individual paying the bill. It is the taxpayers that are going to be paying those bills." (83d Ill. Gen. Assem., House Debates, May 16, 1984, at 220 (statement of Barbara Currie).) Senator James Philip, in urging passage of the seat-belt law, observed that "in 1982 in Illinois some seventy-five people were killed in automobiles while performing their job * * *. This cost Illinois employers some twelve million dollars." (83d Ill. Gen. Assem., Senate Debates, June 21, 1984, at 159 (statement of Senator James Philip).) Senator Dawn Netsch remarked "We intrude because the consequences of the thousands of people * * * who are injured and whose afflictions then are passed on to their families, to all of us in society * * *." (83d Ill. Gen. Assem., Senate Debates, June 21, 1984, at 162 (statement of Senator Dawn Netsch).) Governor Thompson, in explaining his reasons for signing the legislation, estimated that the seat belt law would

"save more than 300 lives in Illinois in the first year, will avoid nearly 43,000 injuries and save more than $400 million in costs." Letter of Governor James B. Thompson to the General Assembly indicating his intent to sign House Bill 2800 (Jan. 8, 1985).

It cannot be seriously questioned that the police power may be used to promote the economic welfare of the State, its communities and its citizens "[I]n the interest of general welfare, the police power may be exercised to protect citizens and their businesses in financial and economic matters, [and] it may be exercised to protect the government itself against potential financial loss." (*Sherman-Reynolds, Inc. v. Mahin* (1970), 47 Ill. 2d 323, 326.) A law whose aim is to reduce the private and public costs resulting from injuries and deaths caused by motor vehicle accidents is therefore within the police power of the State. In finding that a motorcycle helmet law was rationally related to the public welfare, the court in *Simon v. Sargent* (D. Mass. 1972), 346 F. Supp. 277, *aff'd* (1972), 409 U.S. 1020, 34 L. Ed. 2d 312, 93 S.Ct. 463 stated:

> "From the moment of the injury, society picks the person up off the highway, delivers him to a municipal hospital and municipal doctors, provides him wiht unemployment compensation if after recovery he cannot replace his lost job and if the injury causes permanent disability may assume the responsibility for his and his family's continued subsistency. We do not understand a state of mind that permits plaintiff to think that only he himself if concerned." (346 F.Supp. 277, 279, *aff'd* (1972), 409 U.S. 1020, 34 L. Ed. 2d 312, 93 S.Ct. 463).

Because of the drain on private and public financial resources caused by highway accidents society has a legitimate interest in minimizing injuries which result from such accidents. See *Wells v. State* (1985), ____ A.2d ____, 495 N.Y.S. 2d 591; *People v. Weber* (1985), 129 Misc. 2d 993, 494 N.Y.S.2d 960; *State v. Eighth Judicial District Court* (1985), 101 Nev. 658, 708 P.2d

1022; *State v. Beeman* (1975), 25 Ariz. App. 83, 541 P.2d 409; *Love v. Bell* (1970), 171 Colo. 27, 465 P.2d 118. See also Druhot, *The Constitutionality of the Illinois Mandatory Seat Belt Use Legislation,* 741 Ill. B.J. 296 (1986); Note, *The Illinois Seat Belt Law, Should Those Who Ride Decide,* 19 John Marshall L. Rev. 193 (1985); Werber, *A Multi-Disciplinary Approach to Seat Belt Issues,* 29 Cleve. St. L. Rev. 217, 222 (1980).

Defendants make several arguments concerning the effectiveness of safety belts in reducing injuries and arguments regarding the merits of alternative safety devices such as air bags. Defendants also contend that in some instances safety belts may cause injuries instead of preventing them. We need not consider these arguments, however, since they are proper subjects of discussion for the legislature, not the courts (*Hayden v. County of Ogle* (1984), 101 Ill. 2d 413, 421; *City of Carbondale v. Brewster* (1979), 78 Ill. 2d 111, 115; *Pozner v. Mauck* (1978), 73 Ill. 2d 250, 255.) We believe that the General Assembly could reasonably assume that a law requiring drivers and front-seat passengers to wear safety belts will reduce traffic-related injuries and fatalities. (*Wells v. State* (1985), ____ A.D.2d ____, 495 N.Y.S.2d 591; *People v. Weber* (1985), 129 Misc. 2d 993, 494 N.Y.S.2d 960.) Therefore, we hold that section 12.603.1 does not violate the due process clauses of the State and Federal constitutions. To the extent that *People v. Fries* (1969), 42 Ill. 2d 446, is inconsistent with our opinion, it is overruled.

Defendant Greene also filed a motion to strike certain portions of the briefs and appendices filed by the State and certain parties *amicus curiae*. This motion was taken with the case. Our review of the record shows that certain safety statistics relied on by the State and the *amicus* were not presented in the trial courts. Accordingly, defendant Greene's motion to strike this information is allowed.

For the reasons stated the judgments of the circuit courts of Marion, Effingham, Fayette and Champaign counties in cause

No. 62719, 62799, 63705 and 63224 are reversed and said causes are remanded to those respective courts for further proceedings.

Motion allowed;
judgments reversed;
causes remanded.

CLARK, C.J. and SIMON, J., took no part in the consideration or decision of this case.

APPENDIX D

IN THE CIRCUIT COURT OF THE FOURTH
JUDICIAL CIRCUIT
MARION COUNTY, ILLINOIS

No. 85-TR-4889

The People of the State of Illinois,
Plaintiff-Appellant

vs.

Elizabeth J. Kohrig,
Defendant-Appellee.

NOTICE OF APPEAL

An appeal is taken from the order of judgment described below.

(1) *Court to which appeal is taken:* Supreme Court of Illinois pursuant to Supreme Court Rule 603.

(2) *Name of appellant and address to which notices shall be sent.*

Names: People of the State of Illinois

Address: (See below)

(3) *Name and address of appellant's attorney on appeal.*

Name: Hon. Robert W. Matoush, State's Attorney

Hon. Neil F. Hartigan, Attorney General

Address: 100 West Randolph - 12th floor

Chicago, IL 60601

(4) Date of judgment or order: October 25, 1985

(5) *Offense of which convicted:* Not Applicable

(Charge: Failure to Fasten Seat Belt While Operating a Motor Vehicle)

(6) *Sentence:* Not Applicable

(7) *If appeal is not from a conviction, nature of order appealed form:* Order dismissing cause upon holding Seat Belt Statute, Illinois Revised Statutes, Chapter 95½, Section 12-603.1, unconstitutional.

/s/ Robert Matoush

PROOF OF SERVICE

State of Illinois)
) SS
County of Marion)

The undersigned states that _____ served the required number of copies of Appellant's Notice of Appeal upon the persons named below, by placing same in the U.S. Mail at Salem, Illinois with postage fully prepaid, on the 21st day of November, 1985, or by personal service on said date.

Elizabeth Kohrig
201 Chatham
Salem, IL

Hon. Neil F. Hartigan
Attorney General
100 West Randolph
12th Floor
Chicago, IL 60601

R. Edward Veltman, Jr.
Crain, Cooksey, Veltman &
Purcell, Ltd.
623 E. Broadway
P. O. Box 867
Centralia, IL 62801

Robert Matoush

Subscribed and sworn to before me
this 21st day of November, 1985.

Joni M. Little
NOTARY PUBLIC

APPENDIX E

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT

MARION COUNTY, ILLINOIS

No. 85-TR-4889

People of the State of Illinois,

vs.

Elizabeth J. Kohrig,
Defendant.

ORDER AND OPINION

Elizabeth J. Kohrig was charged with failure to fasten seat belt while operating a motor vehicle in violation of Chapter 95½, Section 12-603.1 of the Illinois Revised Statutes Defendant attacks the constitutionality of the Statute.

The relevant portion of the Statute states as follows: "Each driver and front seat passenger of a motor vehicle operated on a street or highway in this State shall wear a properly adjusted and fastened seat safety belt." Ill. Rev. Stat., Ch. 95½, Section 12-603.1 (a). The violation is a Petty offense. Ill. Rev. Stat. Ch. 95½, Section 12-603.1 (d).

The Defendant argues that the Statute in question is beyond the authority of the legislature acting under its police power in violation of Section 2 of Article 1 of the Constitution of the State of Illinois.

The Defendant further argues that the issue raised in this case is the same issue raised in *People v. Fries,* 42 Ill.2d 446, 250 N.E.2d 149. In the *Fries* case the Defendant Appellant was charged with operating a motorcycle without necessary protective headgear. The Defendant *Fries* argued that the Statute was intended only to secure the safety of the wearer of the headgear

in the event of an accident and if it was directed toward the safety of the individual rather than the safety of the public, then the Statute was beyond the authority of the legislature acting under its police powers.

The Illinois Supreme Court found that the motorcycle helmet law was to protect the safety of the wearer and not to protect the general public and held the law unconstitutional under Section 2 of Article II of the Illinois Constitution (now Section 2, Article 1 of the Illinois Constitution). *People v. Fries,* 42 Ill.2d at 449, 250 N.E.2d at 51.

The Supreme Court stated as follows: "The manifest function of the headgear requirement in issue is to safeguard the person wearing it—whether it is the operator or a passenger—from head injuries. Such a laudable purpose, however, cannot justify the regulation of what is essentially a matter of personal safety." *Id.*

It is necessary then to examine the legislative intent to determine if the purpose of this law is to protect the safety of the wearer of the seat safety belt or whether the purpose is to protect the safety of the public other than the wearer. Examination of legislative debate on the issue indicates that the function was to protect the wearer and not other members of the public. How the wearing of a seat safety belt would protect other members of the public is obscure at best.

The legislative intent is further clarified by that portion of the Statute which requires the front seat passenger to wear a seat safety belt. While there have been some remote arguments advanced that requiring the driver to wear a seat belt will somehow make the driver a safer operator these arguments are inapplicable to a front seat passenger. The Defendant in this case is a driver rather than a passenger. Nevertheless, the fact that the legislature made the law applicable to front seat passengers as well as the driver further clarifies its intent to safeguard the wearer and no other members of the public.

This trial court is bound to follow decisions of the Illinois Supreme Court. I find the Supreme Court decision in *People v. Fries* applicable to the issue raised in this case and accordingly hold that portion of Ill. Rev. Stat. Ch. 95½, Section 12-603.1 under which the Defendant was charged unconstitutional.

DATED: October 25, 1985

Enter: _____

Richard H. Brummer
Circuit Judge